

David M. Langevin (MN 329563)  
Rhett A. McSweeney (MN 269542)  
MCSWEENEY/LANGEVIN, LLC  
2116 Second Avenue South  
Minneapolis, MN 55404  
T: 612-746-4646  
F: 612-454-2678  
dave@westrikeback.com  
[ram@westrikeback.com](mailto:ram@westrikeback.com)

Attorney for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

IN RE BARD IVC FILTERS  
PRODUCTS LIABILITY LITIGATION

Melvin Austin, et al

Plaintiffs,

v.

C.R. Bard, Inc., a corporation, and Bard  
Peripheral Vascular, Inc., an Arizona  
Corporation,

Defendants.

No. MD-15-02641-PHX-DGC

Civil Action No.: 2:16-cv-01514-DGC

**NOTICE OF FILING AMENDED  
COMPLAINT**

Pursuant to Local Rule of Civil Procedure 15.1(b), Plaintiff Melvin Austin respectfully submits his Notice of Filing First Amended Complaint. Attached as Exhibit A is a copy of the amended complaint that indicates in what respect it differs from the original complaint. The Defendants do not oppose Plaintiffs' filing of this Notice or the First Amended Complaint.

1 RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of July, 2016

2 By: /s/ David M. Langevin

3 David M. Langevin

4 Rhett A. McSweeney

5 McSweeney/Langevin, LLC

6 2116 2<sup>nd</sup> Avenue South

7 Minneapolis, MN 55404

8 Phone: (612) 746-4646

9 Fax: (612) 454-2678

10 [dave@westrikeback.com](mailto:dave@westrikeback.com)

11 [ram@westrikeback.com](mailto:ram@westrikeback.com)

12 *Attorneys for Plaintiff*

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that on this 15<sup>th</sup> day of July, 2016, I electronically transmitted the  
15 attached document to the Clerk's Office using the CM/ECF system for filing and transmittal of a  
16 Notice of Electronic Filing.  
17

18 By: /s/ David M. Langevin

19 David M. Langevin

20 McSweeney/Langevin LLC

21 2116 2<sup>nd</sup> Avenue South

22 Minneapolis, MN 55404

23 [dave@westrikeback.com](mailto:dave@westrikeback.com)

Phone: (612) 746-4646

Fax: (612) 454-2678

# EXHIBIT A

1  
2  
3 **IN THE UNITED STATES DISTRICT COURT**  
4 **FOR THE DISTRICT OF ARIZONA**

5 IN RE BARD IVC FILTERS  
6 PRODUCTS LIABILITY LITIGATION

No. MD-15-02641-PHX-DGC

7 **FIRST AMENDED MASTER SHORT**  
8 **FORM COMPLAINT FOR DAMAGES**  
9 **FOR INDIVIDUAL CLAIMS**

10 Plaintiff(s) named below, for their Complaint against Defendants named below,  
11 incorporate the Master Complaint for Damages in MDL 2641 by reference (Doc. 364).

12 Plaintiff(s) further show the Court as follows:

13 1. Plaintiff/Deceased Party:

14 Melvin Austin

15 2. Spousal Plaintiff/Deceased Party's spouse or other party making loss of  
16 consortium claim:

17 Jennifer Austin

18 3. Other Plaintiff and capacity (i.e., administrator, executor, guardian,  
19 conservator):

20 N/A

21 4. Plaintiff's/Deceased Party's state(s) [if more than one Plaintiff] of residence at  
22 the time of implant:

Iowa

5. Plaintiff's/Deceased Party's state(s) [if more than one Plaintiff] of residence at the time of injury:

Iowa

6. Plaintiff's current state(s) [if more than one Plaintiff] of residence:

Iowa

7. District Court and Division in which venue would be proper absent direct filing:

United States District Court for the Southern District of Iowa

8. Defendants (check Defendants against whom Complaint is made):

☒ C.R. Bard Inc.

☒ Bard Peripheral Vascular, Inc.

9. Basis of Jurisdiction:

☒ Diversity of Citizenship

☐ Other: \_\_\_\_\_

a. Other allegations of jurisdiction and venue not expressed in Master Complaint:

10. Defendants' Inferior Vena Cava Filter(s) about which Plaintiff(s) is making a claim (Check applicable Inferior Vena Cava Filter(s)):

☐ Recovery<sup>®</sup> Vena Cava Filter

☐ G2<sup>®</sup> Vena Cava Filter

€ G2<sup>®</sup> Express (G2<sup>®</sup>X) Vena Cava Filter

€ Eclipse<sup>®</sup> Vena Cava Filter

€ Meridian<sup>®</sup> Vena Cava Filter

X Denali<sup>®</sup> Vena Cava Filter

X Other: Nitinol Simon Filter

11. Date of Implantation as to each product:

March 16, 2005 (Nitinol)

07/30/2014 (Denali)

12. Counts in the Master Complaint brought by Plaintiff(s):

☒ Count I: Strict Products Liability – Manufacturing Defect

☒ Count II: Strict Products Liability – Information Defect (Failure to Warn)

☒ Count III: Strict Products Liability – Design Defect

☒ Count IV: Negligence - Design

☒ Count V: Negligence - Manufacture

☒ Count VI: Negligence – Failure to Recall/Retrofit

☒ Count VII: Negligence – Failure to Warn

☒ Count VIII: Negligent Misrepresentation

☒ Count IX: Negligence *Per Se*

☒ Count X: Breach of Express Warranty

☒ Count XI: Breach of Implied Warranty

☒ Count XII: Fraudulent Misrepresentation

- 1            ☒     Count XIII:   Fraudulent Concealment
- 2            ☒     Count XIV:   Violations of Applicable \_\_\_\_\_ (insert state)
- 3                                Law Prohibiting Consumer Fraud and Unfair and Deceptive Trade
- 4                                Practices
- 5            ☒     Count XV:   Loss of Consortium
- 6            ☐     Count XVI:   Wrongful Death
- 7            ☐     Count XVII: Survival
- 8            ☒     Punitive Damages
- 9            ☐     Other(s):     \_\_\_\_\_ (please state the facts supporting
- 10                                this Count in the space immediately below)

11 \_\_\_\_\_

12 \_\_\_\_\_

13 \_\_\_\_\_

14 \_\_\_\_\_

15 \_\_\_\_\_

16            RESPECTFULLY SUBMITTED this ~~17~~ 15 day of ~~May~~ July, 2016.

17                                MCSWEENEY/LANGEVIN LLC

18                                By: /s/ David M. Langevin

19                                David M. Langevin  
20                                Rhett A. McSweeney  
21                                2116 2nd Avenue South  
22                                Minneapolis, MN 55404  
                                 Attorneys for Plaintiff(s)

**CERTIFICATE OF SERVICE**

I hereby certify that on this ~~17~~ 15 day of ~~may~~ July, 2016, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing.

By: /s/ David M. Langevin  
Rhett A. McSweeney  
David M. Langevin  
McSweeney/Langevin LLC  
2116 2<sup>nd</sup> Avenue South  
Minneapolis, MN 55404  
Phone: (612) 746-4646  
Fax: (612) 454-2678